Sing... Bench

(1) (4)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 4218 /2004

PETITIONER

Ramchandra son of Shri Jagbar Singh, aged about 52 years, resident of Village Ambatoli, Sitapur, Tahsel Sitapur, District Sarguja (Chhattisgarh)

P.R. No. 4217/04
Presented by Shri A.R. Jagtap
dated 26/11/04

VERSUS

RESPONDENTS

1. State of Chhattisgarh through Secretary D.K.S. Bhawan Raipur Chhattisgarh.

2. Collector Sarguja Ambikapur District Sarguja.(Chhattisgarh)

3. Sub-Divisional Officer Sitapur Tahsil Sitapur District Sarguja.

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26-11-04
Clerk to A.G. Bilaspur

4. Tahsildar Sitapur, Tahsil Sitapur, District Sarguja (C.G.)

5. Patwari Circle No. 29 Tahsil Sitapur, District Sarguja(C.G.)

26/10/04

6. Ramesh Kashyap son of Shri S.N. Kashyap resident of Villave Sitapur, Tahsil Sitapur, District-Sarguja (Chhattisgarh)

(2) (8)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT/WRITS DIRECTION/DIRECTIONS, ORDER ORDERS

XI-HC—78

(61)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P. No. 4218/04

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

15-12-2004

Shri Jagdish Singh Baraik, counsel for the petitioner. Shri Sanjay S. Agrawal, Government Advocate for the State.

Heard on admission and M.(W.)P.No.4589/2004 for interim relief.

Contention of petitioner is that his father received land bearing Khasra No.664 and 665 area 0.356 hectares on exchange by the order of Collector, Surguja in the year 1980, and after his death, the petitioner, being son, has got all the lands mutated in his favour. High Court of Madhya Pradesh, vide order dated 11-2-1988, ordered that, –

> **"However, the petitioner should not continue construction without obtaining necessary order for diversion and necessary sanction from Gram Panchayat Authorities."**

Petitioner has filed this petition alleging that Sub-Divisional Officer has not yet decided the application pending for diversion and, therefore, in accordance with deeming provision of Section 172 of the Chhattisgarh Land Revenue Code, it will be presumed that diversion in favour of petitioner has been made, therefore, he may be permitted to construct the house on the suit land. Petitioner has raised another question that Tahsildar has passed an order under Section 248 of the Chhattisgarh Land

(62)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P. No 4218/04

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Revenue Code alleging some of his land as Government land, and by that order dated 15-7-2004, he wants to dispossess him.

Third contention of the petitioner is that respondent No.6 has encroached upon some of his land, therefore, respondent No.6 be directed to remove the encroachment.

For invoking the deeming provision of Section 172 of the Chhattisgarh Land Revenue Code, it was necessary for the petitioner to call the attention of Sub-Divisional Officer by written communication, the omission of not passing any order on the application pending with him for diversion. Petitioner has not filed any such written communication before Sub-Divisional Officer, therefore, he cannot take the shelter of the deeming provision. If respondent No.6 has encroached upon the land of petitioner, the remedy lies in Civil Court where the issue can be settled by affording both the parties proper opportunity of hearing. As regards order passed by Tahsildar under Section 248 of the Chhattisgarh Land Revenue Code, that order is appealable, and if petitioner wants to establish his right as title holder, he can also establish his right in Civil court in accordance with law.

It is apparent that, to invoke the writ jurisdiction of this Court, there is no material available in favour of the petitioner, therefore, this writ petition is liable to be dismissed and is accordingly dismissed summarily.

(63)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P.No.4218/04

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	In the light of above order, M.(W.)P.No.4589/2004 for interim relief and I.A.No.8541/2004 for urgent hearing stand disposed of. **Sd/-** **V.K.Shrivastava** **Judge**	

17.12

23.12.04